

Chief Constables' Council

NPCC Criminal Justice Co-ordination Committee Update

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1. INTRODUCTION/PURPOSE

- 1.1. The purpose of this paper is to provide updates in respect of key issues currently under consideration within the Criminal Justice Co-ordination Committee, each of which has the potential to have substantial impact on CJ related practice in future. The three issues are Bail/RUI, Public Order legislation and Digital Processing Notices (Consent Forms).
- 1.2. There are also three appendices attached to this paper, which provide updates in relation to the Director's Guidance for Specified Cases (Appendix A) and Electronic Monitoring (Appendices B & C).

2. BAIL / RELEASED UNDER INVESTIGATION

- 2.1. Colleagues will know that since the revised bail legislation was introduced in 2017, concerns have been growing regarding the unintended consequences of the new bail provisions.
- 2.2. CC Darren Martland and AC Ephgrave have been engaging with the Home Office over many months to make the case for a review of the legislation and to seek a commitment from government to undertake such a review at the earliest opportunity. The Home Secretary recently announced that the bail legislation will be reviewed in full, albeit those plans are



currently on hold due to Purdah. The announcement has been well received by stakeholders across the Criminal Justice System.

2.3. S31 Law Enforcement

- 2.4. CC Martland and AC Ephgrave will continue to engage with the Home Office to ensure the views of the Police Service are central to the review and to ensure that lessons from the previous amendment are learned.

3. PUBLIC ORDER LEGISLATION

- 3.1. The Extinction Rebellion protests of April and October and the policing response to them served to highlight the shortcomings of the current public order legislation when applied to mass action over many days in many locations, but under a single banner. This was further demonstrated by the recent High Court ruling that invalidated the application of a Section 14 prohibition on Extinction Rebellion protest in London during October.

3.2. S31 Law Enforcement

3.3. S31 Law Enforcement

4. DIGITAL PROCESSING NOTICES

- 4.1. Following the introduction of the Digital Processing Notice by the NPCC in April 2018, there has been robust debate about the validity of that approach, principally led by organisations representing victims of crime. This culminated in a Judicial Review of the use of the form being lodged by the Centre for Women’s Justice (CWJ), with the NPCC, CPS and College of Policing as defendants.
- 4.2. This Judicial Review relates to the use of the form and challenges the processes of extracting and processing data.
- 4.3. In parallel to this, the Information Commissioner’s Office commenced an investigation into the seizure and examination of digital devices belonging to complainants in the summer of 2018 following submissions by two complainants. Their report should have been published this summer but is now expected in January 2020.

4.4 S31 Law Enforcement

4.5 S31 Law Enforcement

4.6 S31 Law Enforcement

AC Nick Ephgrave

Assistant Commissioner – Metropolitan Police Service - NPCC Criminal Justice Committee Chair

January 2020

Revised Directors Guidance

On the 13th September, DCC Blaker circulated the revised Director's Guidance to all force Chief Officer leads for Criminal Justice. This guidance included annexes for both the management of cases once they became de-specified, and for the introduction of the revised guidance into police forces. The guidance was intended to be introduced with effect from 1st October 2019 when the CPS had decided that they were implementing it, however following concerns raised by some forces, a new commencement date of 1st April 2020 was negotiated by AC Ephgrave.

This postponement has enabled DCC Blaker, as part of his Courts Portfolio, to jointly host a workshop with the CPS on 11th December with force leads. The intention is to offer CJ Traffic leads for all forces an opportunity to understand the process, seek clarity and ensure readiness to operationalise the revised guidance.

Background

Under the Police Led Prosecutions (PLP) MOU of 2013, it was the case that each police force negotiated locally with the CPS as to whether the sole responsibility of the Police was to just warn witnesses, or whether they carried out other pre-trial work. In 2014, the National Prosecution Team was formed as a collaboration between the Police and CPS who developed a national digital traffic file, which was subsequently tested in Greater Manchester. This proof of concept was supported by the "Director's Guidance on Traffic Cases" which was rolled out by the CJS Efficiency Programme in March/April 2014.

The guidance referred to was limited to traffic cases as it was drafted as part of the development of a digital traffic file. The guidance itself applied a strict interpretation of the 2012 Specified Proceedings Order, namely that cases ceased to be specified only when a court begins to receive evidence. Furthermore, the guidance set out the procedure to be followed for simple road traffic cases that would not require an upgrade file in the event of a not guilty plea. The agreed procedure was that following an adjournment for trial, the police warned the required witnesses to attend, notified the CPS of the trial date and asked that a prosecutor be made available, and the CPS would then conduct the trial.

In 2015, as part of the national implementation of "Transforming Summary Justice" (TSJ), the CPS designed a Magistrates' Court Standard Operating Practice, (SOP) for staff. The trial preparation system for other non-traffic NGAP cases was to then be followed in traffic matters, rather than the aforementioned 2014 Director's Guidance on Traffic Cases. The rationale for this change emanated from the fact that most police forces at this stage were only prepared to fix trial dates and undertake case management at the PLP hearing. The SOP stated that when a contested PLP case was received from the police, the CPS were to follow the "NG Plea adjourned for Trial" section of the 2014 guidance.



In 2017, it became clear that there were significant regional differences in how the 2014 guidance and the 2015 SOP were being implemented. Challenges included police management of contested cases in PLP courts having limited effectiveness in certain areas, legal issues not being identified, correct witnesses not being warned, and acceptable pleas not being considered. The CPS experienced files being submitted close to the trial date which resulted in insufficient time for prosecutors to comply with disclosure requirements under CPIA. As a result of these challenges, it was decided by the CPS that national agreement should be sought to amend the Director's Guidance to clarify police and CPS responsibilities in de-specified cases.

In July 2017, DCC Blaker, as the CJCC Courts Portfolio Lead, met with CPS colleagues, Greg McGill and Jean Ashton. It was proposed that the process for dealing with de-specified PLP cases should be redefined and agreed. After review, it became apparent that a fully revised version of the guidance was required. DCC Blaker undertook engagement with forces on five separate occasions over the last two years through their Traffic Prosecution leads and raised the issue at the Courts Portfolio annual workshop to gather feedback on the proposals.

The change of nomenclature to the guidance reflects that it is no longer confined to traffic cases. The revised guidance now encompasses all specified proceedings that are initially prosecuted by the police (although most are still traffic offences), including those passed to the CPS to prosecute following a not guilty plea. Individual forces continue to retain discretion as to whether they use PLP for non-traffic matters or continue using postal requisitions, as allowed by legislation. This position may be reviewed in the future as a potential opportunity to reduce the burden of crime case file preparation on forces.

DCC Blaker previously made a recommendation to forces suggesting that PLP funding streams are used to meet any resource demands within your traffic prosecution teams. The reasoning was that forces receive costs for specified cases dealt with, which could also provide resources for dealing with de-specified PLP cases arising from the process.

It has been identified that an area of specific concern centres on disclosure and as such, this was referred by DCC Blaker for legal advice. The position is that the Police retain all aspects of preparation, including the duty of disclosure, until such time as the case is passed to the CPS for trial. This position has been subject to misinterpretation previously.

To contextualise the impact on forces, a medium size force would expect approximately 8-10% of their PLP cases per month to have a not guilty plea and subsequent file build (this is based on Kent Police data). There is disparity however, for example West Yorkshire experience 20% of PLP led cases receiving a not guilty plea.

At the end of October 2019 a further update was provided to forces concerning disclosure, namely, that the CPS had confirmed that the responsibility for signing and serving the SDC remained with themselves in line with crime cases. For clarity, it remains the responsibility of the Police to serve upon the defence a redacted copy of any further witness statements relied upon to prove the case.

DCC Blaker is aware of, and understands the issue around costs for forces arising from the changes made to the Guidance relating to the process for de-specified cases. It is recognised that there is a shift of responsibilities for some forces and that the CPS will continue to receive all of the costs awarded following a conviction. This is the case even though the police bear the responsibility for building the not-guilty file for trial. It is proposed that policing reviews this situation to ensure that the case file preparation work done by forces is fairly recognised and rewarded. (The question of CPS transferring funding to forces was raised during negotiations around the revised Guidance, however

no agreement was forthcoming). The Courts Portfolio have engaged with the Home Office to understand whether there is any opportunity to increase the rate awarded in light of the new Guidance. The Courts Portfolio will also seek to work with the HMCTS Legal Team to try and facilitate a satisfactory remedy to re-align the costs.

Implementation of the new Director's Guidance is on the 1st April 2020 and forces will need to be prepared to fulfil the responsibilities set out in the guidance.

Electronic Monitoring Update

Current Situation

On 30 September 2019, roll-out of the Ministry of Justice (MoJ) new statutory electronic monitoring (EM) service utilising GPS tags was completed across England and Wales. This is a significant milestone in the EM Programme.

S31 Law Enforcement

Forces have not seen a discernible increase in demand arising from the launch of GPS tagging. The NPCC EM working group met on 12 November 2019 with the majority of forces represented. Every force across England and Wales has an identified EM single point of contact. There are 10 regional leads and a review process has commenced supported by C/Insp Cain (seconded police officer to the EM Programme).

A review of responses to court bail curfew breaches has commenced (see separate paper). At the request of policing, a performance dashboard has been created by the MoJ, which is now available to all SPoCs.

Senior Stakeholder Board

The MoJ have committed to the ongoing monthly provision of the Senior Stakeholder Board.

The terms of reference were updated at the most recent meeting on 15 November 2019:-
to provide a forum for senior stakeholders to oversee the operation of the EM service (**curfew** and **location monitoring**), and give opportunity to provide feedback and input into the future direction of the service. The forum will also be used by the MoJ to update members on the progress of the EM Programme, and to consult with stakeholders on any additions/ changes to the service, as well as drive collective responsibility in making improvements to the service where these are identified.

Future Plans

Roll out of EM for the Children and Young People cohort is due to commence on 30 November 2019, with post custody cohorts in London. This is due to be finalised across England and Wales by the end of March 2020 and will include court imposed bail. Numbers are forecast to be low; fewer than 100 per year, and within the overall cap of 1000 units agreed by DCC Stratford (NPCC EM) and the MoJ.

Consultation has occurred with CC Pinkney (NPCC CYP Lead) on the proposed arrangements for the Youth Cohort.



The Home Office Foreign National Offender (FNO) tagging programme is progressing. Options to use the MoJ platform for some testing are being explored and planning has commenced for the potential introduction of alcohol monitoring, dependent on policy decisions which will be made by the next government.

Finally, development and testing of the planned portal that can be used by policing (and other agencies) to access EM data continues. Police leads will work with MoJ colleagues to assess the potential for portal use and develop this throughout 2020.

Electronic Monitoring – Court Imposed Bail Breaches

1. Over the past twelve months, police colleagues have engaged with Ministry of Justice (MoJ) staff to implement a process within each force to receive, assess and appropriately act on EM breach notifications of GPS tags as part of the wider MoJ EM Programme roll-out. Suitable arrangements are now extant in all England and Wales forces.
2. This work has drawn attention to existing arrangements to deal with Radio Frequency (RF) curfew breach notifications. RF technology has been in place for many years to monitor subjects' compliance with court imposed bail conditions involving a curfew.
3. At the NPCC EM Working Group (EMWG) on 21 March 2019 chaired by DCC Stratford, force leads were asked to review their local processes for receiving and dealing with RF curfew breach notifications. Furthermore, the need to improve our collective response to RF curfew breaches has been discussed at the MoJ Senior Stakeholder Board (SSB) where DCC Stratford represents the NPCC.

4. S31 Law Enforcement

5. S31 Law Enforcement

6. Whilst the issues identified are not attributable solely to the Police Service, in discussions with Mr Adrian Scott (Director of EM and the Prison Reform Portfolio for the MoJ) DCC Stratford has agreed it is reasonable to expect all forces to have in place arrangements to:-
 - receive breach of court imposed bail notification via email from the contractor, Electronic Monitoring Service (EMS), on behalf of the MoJ
 - carry out a risk assessment process on each individual notification
 - notify the contractor (EMS) of the police decision and intended action.
7. This mirrors what has already been agreed for EM GPS tags and is effectively our statutory responsibility. This does not commit policing to making an arrest for every breach notification – the Bail Act sets out that we do have discretion on this. HMCTS hosted a multi-agency process mapping workshop for EM court bail on 6 November 2019. C/Insp David Cain (the police representative within the MoJ) attended on behalf of policing. Issues were identified for all agencies and a delivery team and action plan is being drawn together coordinated by HMCTS.
8. As part of this, on 8 November 2019, DCC Stratford wrote to all Chief Constables providing them with a snapshot of MoJ data on local caseload, asking them to review this and requesting they satisfy themselves that suitable processes in place to meet the requirements as set out in paragraph 6. To date, 33 responses have been received.

9. Force responses to date indicate that the process is in place or is being implemented. In addition

10. This issue was further discussed at the NPCC EMWG meeting that took place on 12 November 2019, with attendees from the majority of forces and C/Insp Cain is working closely with MoJ Policy to agree a new court bail policy, and to implement agreed improvements in breach notifications to forces by the EMS to aid risk assessment. It is felt that this activity will leave the service well positioned to fulfil its responsibilities in respect of RF curfew breach notifications and it is suggested a further update is provided to the next CJCC.